



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201318029

FEB 08 2013

Uniform Issue List: 408.03-00

T:EP:RA:T1

LEGEND:

Taxpayer A =

IRA B =

Custodian C =

Account D =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This is in response to your letter dated June 12, 2012, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request:

Taxpayer A represents that he received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period

prescribed by section 408(d)(3) of the Code was due to the fact that Custodian C opened a non-IRA savings account, Account D, rather than an IRA savings account as Taxpayer A intended. Taxpayer A further represents that, aside from taking required minimum distributions in Amount 2 and Amount 4, Amount 1 has not been used for any other purpose.

Taxpayer A maintained IRA B, which was invested in a certificate of deposit (CD) with Custodian C. On August 8, 2011, the date the CD reached its maturity date, Taxpayer A went to discuss potential investment alternatives with a Custodian C representative. That day, after deciding not to renew the CD, Taxpayer A opted to open a savings account with Custodian C to transfer Amount 1 into it. Based on their conversation, Taxpayer A believed that the savings account was within IRA B, and he had no intention of withdrawing all his retirement funds from IRA B. Taxpayer A represents that a Custodian C representative prepared and filled out the paperwork opening Account D. Taxpayer A maintains that he signed the forms prepared by the Custodian C representative with the expectation that Amount 1 would be deposited into a savings account within IRA B.

Prior to transferring the funds into Account D, Taxpayer A reduced Amount 1 by Amount 2, resulting in Amount 3, which was transferred to Account D. Taxpayer A represents that he took Amount 2 to satisfy his required minimum distribution ("RMD") partially for the year, under section 408(a)(6) of the Code.

Consistent with his understanding that Account D was a savings account within IRA B, Taxpayer A completed his RMD distributions for 2011, and he took a distribution in Amount 4 from Account D on December 27, 2011, resulting in a balance of Amount 5 in Account D.

Taxpayer A discovered, upon receipt of his Form 1099-R for the year 2011, that Account D was not a savings account within IRA B and that, at the time of the deposit of Amount 3 into Account D, an unintended distribution of his entire retirement savings had resulted. Taxpayer A represents that he consistently treated Account D as an IRA, as evidenced by his withdrawal of the RMD for 2011.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (Service) waive the 60-day rollover requirement in section 408(d)(3) of the Code with respect to the distribution of Amount 5 (Amount 1, less the RMD distributions of Amount 2 and Amount 4) from IRA B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 5 was caused by Custodian C opening a non-IRA savings account, Account D, rather than a savings account within IRA B as Taxpayer A intended.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 5 (Amount 1, less the RMD distributions of Amount 2 and Amount 4) from IRA B. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to the contribution of an amount not to exceed Amount 5, such contribution will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact (I.D. #) by
phone at or fax at . Please address all correspondence to
SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

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cc: